IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1863 OF 2005

Rajesh Gulati ..Petitioner

Vs.

Kailash Agarwal & Anr. ..Respondents

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Mr.S.V.Marwadi Advocate for Petitioner
Mr.Y.S.Shinde A.P.P. for the State
Mr.Kailash Agarwal Respondent no.1 in person

...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPT. 19,2005

P.C.

1. Heard the learned advocate for the petitioner, the respondent no.1 in person-complainant and the learned A.P.P. for the State.

2. The petitioner is seeking quashing of proceedings relating to Criminal Case No.1091/SS/2005 pending before the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai. In the said case, process has been issued against the petitioner under Section 138 of

Negotiable Instruments Act. The learned advocate for the petitioner submitted that the learned Magistrate committed an error in issuing process and the said process deserves to be set aside. It is further submitted that if the process issued against the petitioner is set aside, the proceedings in respect of the petitioner would come to an end.

3. For the reasons recorded in the decision of this Court in the case of **V.K.Jain and others Vs. Pratap V. Padode reported in 2005(3) Mh.L.J.778,** I am of the opinion that the petitioner has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the petitioner prefers a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the petitioner to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the petitioner makes a statement that the necessary

revision will be preferred within four weeks from today. In view of this statement, ad-interim order passed by this Court, is extended for a period of four weeks from today.

. The respondent no.1-complainant fairly states that no objection will be raised in respect of delay in filing the revision.

5. On the necessary revision being preferred by the petitioner before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties.

6. Writ Petition is disposed of.

[V.K.TAHILRAMANI,J.]